

Central Intelligence Agency



Washington, D.C. 20505

7 June 1988
OCA 1813-88

Ms. Toni G. Verstandig
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Ms. Verstandig:

Per your request enclosed is a copy of S. 1721
as passed by the Senate.

I have also enclosed a letter from Colin Powell
addressed to Chairman Stokes and Congressman Hyde of
the House Intelligence committee regarding H.R. 3822.



Legislation Division
Office of Congressional Affairs

Enclosures
as stated

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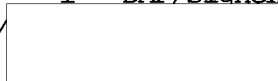
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(6 June 1988)

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100TH CONGRESS
2D SESSION

S. 1721

AN ACT

To improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Intelligence Oversight
4 Act of 1988".

5 SECTION 1. Section 662 of the Foreign Assistance Act
6 of 1961 (22 U.S.C. 2422) is hereby repealed.

7 SEC. 2. Section 501 of title V of the National Security
8 Act of 1947 (50 U.S.C. 413) is amended by striking the lan-
9 guage contained therein, and substituting the following new
10 sections:

WASHINGTON

Dear Mr. Chairman:

We appreciate the opportunity to work with the Committee in the effort to address certain technical issues raised by the language of H.R. 3822, the Intelligence Oversight Act of 1988, as introduced in the House of Representatives. We have reviewed the proposed amendments (copy attached) provided to us by Committee staff on May 9. These amendments as drafted address certain technical problems in the original language of H.R. 3822 about which agencies expressed concern. (The CIA does not object to the provision on the use of non-appropriated funds provided an acceptable agreement is reached with committee staff on terms and conditions under which non-appropriated funds would be reported to the committee.)

The proposed amendments do not, of course, resolve the Administration's constitutional objections to the proposed Act's provision regarding the forty-eight-hour reporting requirement for all covert action Findings, a problem that was outside the scope of work our staffs have done on the technical issues presented by the proposed Act. It should be well understood that the President's senior advisors will recommend a veto of legislation containing such an absolute reporting requirement because such a requirement encroaches upon the President's constitutional authority. As the President said in his message to Congress, March 31, 1987, "I will strongly oppose legislation that would attempt to encroach further on what I regard as the President's independent constitutional authority in the intelligence field."

In our work with the Committee staff, the effort to reach agreement about an improved definition of "covert action" for incorporation into the proposed Act has been especially important. This effort has helped to clarify and strengthen our mutual understanding about what is meant by covert action. While experience over time has produced mutual understanding as to what constitutes covert action, ambiguities in existing law have created misunderstandings and tension that both the Executive and Legislative Branches are determined to avoid in the future. As we understand it, the proposed definition is a distinct improvement over the provisions of existing law. Our understanding of the proposed definition is explained in the attached analysis.

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In summary, the language used in the definition as well as the process by which it was developed, should go a long way toward preventing misunderstandings in the future. We hope that it and the other technical amendments our staffs have discussed can be incorporated in a bill that does not contain objectionable features that would require a Presidential veto.

Sincerely,

A handwritten signature in dark ink, appearing to read 'C. L. Powell', with a stylized flourish at the end.

Colin L. Powell

Attachment: Definition

The Honorable Louis Stokes
Chairman
Permanent Select Committee
on Intelligence
House Office Building
Washington, D. C. 20515

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HPSCI
May 9, 1988

AMENDMENTS TO H.R. 3822

1. Page 1, line 5, delete "1987" and insert in lieu thereof "1988". Page 3, line 23, delete the comma after "methods" and insert in lieu thereof "or other exceptionally sensitive matters,". Page 6, line 11, delete the comma after "methods" and insert in lieu thereof "or other exceptionally sensitive matters,".
2. On page 3, line 20, delete "(a)". Page 3, line 26, insert "(1)" before "keep". Page 4, line 6, strike the period and insert in lieu thereof "; and". Page 4, line 7, strike everything through "shall" on line 10, and insert in lieu thereof "(2)".
3. On page 4, line 17, strike "The" and all that follows through "when" on line 19 and insert in lieu thereof "The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless".
4. On page 4, line 20, strike "the" and insert in lieu thereof "identifiable".
5. Page 5, lines 21-22, delete "in consultation with the Director of Central Intelligence,".
6. On page 8, line 14, strike everything through the period on page 9, line 1 and insert in lieu thereof

"(e) The term 'covert action' means an activity or activities conducted by an element of the United States Government to influence political, economic, or military conditions abroad so that the role of the United States Government is not intended to be apparent or acknowledged publicly, but does not include—

"(1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

"(2) traditional diplomatic or military activities or routine support to such activities;

"(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

"(4) activities to provide routine support to the overt activities (other than activities described in paragraphs (1), (2), or (3)) of other United States Government agencies abroad."

7. Strike "special activity" and "special activities" wherever they occur and insert in lieu thereof respectively "covert action" and "covert actions". Page 4, line 20 and page 7, line 21, strike "activity" and insert in lieu thereof "action". Page 5, lines 8 and 13, strike "activities" and insert in lieu thereof "actions". Page 8, line 11, strike "funding" and insert in lieu thereof "finding". Page 9, line 2, strike "country" and insert in lieu thereof "government".
8. Page 9, line 11, strike the comma and all that follows through the comma on line 13. Page 9, line 14, strike "new subsection (d)". Page 9, line 21, strike the quotation marks and insert after line 21 the following:

"(e) Except as provided in Section 204(b) (appearing under the heading 'General Provisions--Department of Justice') of the Department of Justice Appropriations Act, 1988 (contained in P.L. 100-202) and in Section 423 of Title 10, United States Code, funds available to an intelligence agency which are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if they are used for activities reported to the appropriate congressional committees pursuant to procedures jointly agreed upon by such committees, the Director of Central Intelligence or the Secretary of Defense, which identify types of activities for which nonappropriated funds may be expended and under what circumstances an activity must be reported as a significant anticipated intelligence activity before such funds can be expended."
9. On page 10, line 1, insert "the anticipated transfer in any fiscal year of" before "any".